

Asset Purchase Agreement

(Some schedules and exhibits omitted to reduce bulk, but available upon request)

<u>Federal Communications Commission</u>	
Exhibit No. <u>MM-98-66</u>	Exhibit No. <u>17</u>
Presented by <u>Pathfinder</u>	
Disposition	Identified <input checked="" type="checkbox"/>
	Received <u>X 11-4-98</u>
	Rejected <input type="checkbox"/>
Reporter <u>G. Holmes</u>	
Date <u>11-4-98</u>	<u>10-26-98</u>

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is made on October __, 1993 between Booth American Company ("Seller") and _____ ("Purchaser"). In the event this Agreement is assigned by _____, the assignee shall assume all rights, obligations and liabilities under this Agreement, and Seller agrees _____ shall have no further obligations or liabilities under this Agreement. [or any assignee controlled thereby] OK

A. Seller owns and operates radio station WRBR (FM) in South Bend, Indiana (the "Station") pursuant to licenses and other authorizations issued by the Federal Communications Commission ("FCC") for the operation of the Station.

B. Subject to FCC approval, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Station Assets (as defined in Section 1.1 below) upon the terms of this Agreement.

Therefore, the parties agree as follows:

1. Sale of Station Assets; Assumption of Liabilities.

1.1 Sale of Station Assets. Subject to the terms of this Agreement, at the Closing (as defined in Section 2.2 below), Seller will sell to Purchaser the following assets, free and clear of all liens, encumbrances and security interests of any nature whatsoever, as they exist on the Closing Date (as defined in Section 2.2 below) (collectively, the "Station Assets"):

(a) All licenses, permits and auxiliary authorizations issued by the FCC or any other governmental authority for the operation of the Station, as listed on Schedule 1.1(a) to this Agreement ("Governmental Licenses").

(b) ~~The~~ ^{all} personal property ^{supplies inventory} and equipment ^{including those items} listed on Schedule 1.1(b) to this Agreement, together with all replacements of and to such property and equipment made between the date of this Agreement and the Closing Date. OK

(c) The real property described on Schedule 1.1(c) to this Agreement (the "Real Estate").

(d) All of Seller's books and records related to the Station Assets or the operation of the Station, including property tax records, FCC logs, technical data ~~and~~ records (copies of such books and records may be retained by Seller), but excluding all accounting and financial records and other corporate records of Seller. OK

[Please send copies of all Schedules]

and all signs, slogans, jingles, phone numbers, trademarks, tradenames, servicemarks, logos, copyrights and similar materials and rights pertaining to the Station,

(e) All right, title and interest of Seller in and to the name, trade name or slogan "WRBR-FM", ~~and any derivatives thereof,~~ together with any goodwill associated with ~~such name, trade name or slogan.~~ any of the foregoing

(f) All contracts, leases and agreements concerning the operations of the Station which are listed on Schedule 1.2.

1.2. Limitation on Assumed Liabilities. At the Closing, Purchaser will only assume those liabilities and contractual obligations of the Station listed on Schedule 1.2 to this Agreement (the "Assumed Liabilities"). Except for the Assumed Liabilities, Purchaser does not assume and will not be liable for any other obligation, responsibility or liability of the Station or Seller.

1.3. Excluded Assets. The Station Assets shall not include those items specified on Schedule 1.3.

2. Purchase Price: Closing.

2.1 Purchase Price.

(a) The total consideration for the Station Assets and the Noncompetition Agreement (as defined in Section 2.3(a)(6) below) (the "Transaction Consideration") will be \$660,000, payable in accordance with Schedule 2.1(a) to this Agreement.

(b) The Transaction Consideration will be allocated between the Station Assets and the Noncompetition Agreement in accordance with Schedule 2.1(b) to this Agreement. Seller and Purchaser will file all income and other tax returns in a manner consistent with Schedule 2.1(b).

2.2 Closing. The closing of the sale of the Station Assets (the "Closing") will be held at the offices of Seller's counsel, Honigman Miller Schwartz and Cohn, 2290 First National Building, Detroit, Michigan 48226, on the second business day after the FCC's consent to the assignment of the Station's FCC Governmental Licenses has become a Final Order (as defined below), or at such other place or places and such other date as may be agreed upon by the parties (the "Closing Date"); provided that upon the parties' agreement, the Closing may occur after the FCC's grant of consent to the assignment of the Station's FCC Governmental Licenses but before such grant has become a Final Order. The Closing will be deemed to be effective as of 12:01 a.m., local time on the Closing Date. As used in this Agreement, the term "Final Order" means the FCC having given its consent, without any condition materially adverse to Purchaser or Seller, to the assignment of the FCC Governmental Licenses to Purchaser and the time for filing any protest, request for stay, reconsideration by the FCC, petition for rehearing or appeal of such order having expired, and when no protest, request for stay, reconsideration by the FCC, petition for rehearing or appeal of such order is pending.

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2.3 Closing Procedures.

(a) At the Closing, Seller will deliver to Purchaser:

(1) the executed bill of sale, assignment and assumption agreement (the "Assignment and Assumption Agreement") and ^{warranty} deed attached as Exhibits 2.3(a)(1)(A), (B) and (C) to this Agreement, respectively;

(2) executed copies of any consents or approvals required under Section 6.2 below;

(3) copies of Seller's articles of incorporation and bylaws, and resolutions of the Board of Directors ^(and shareholders) of Seller authorizing the execution, delivery and performance by Seller of this Agreement and all other agreements contemplated by this Agreement; ^{certified by Seller's Secretary}

(4) a certificate from the Secretary of State of Michigan dated not more than ten days before the Closing Date, as to the legal existence and good standing of Seller under the laws of such state;

(5) a certificate from the Secretary of State of Indiana, dated not more than ten days before the Closing Date, as to the due qualification of Seller to do business in such state;

(6) the executed non-competition agreement attached as Exhibit 2.3(a)(6) to this Agreement (the "Noncompetition Agreement");

(7) the executed security agreement (the "Security Agreement") and pledge agreement (the "Pledge Agreement") attached as Exhibits 2.3(a)(7)(A) and (B) to this Agreement, respectively;

(8) evidence that Seller has ordered and paid the premium charge for the issuance of the final title policy in pursuance of the commitment for title insurance described in Section 5.5 below; ~~and~~

(9) a copy of a closing statement, executed by Seller, showing the computation of the funds payable to Seller at Closing pursuant to this Agreement; ^{OK}

(10) opinion letter of Seller's counsel in form and substance ^{Satisfactory to Buyer and its counsel;}

(b) At the Closing, Purchaser will deliver to Seller:

(A) an executed promissory note in the form of Exhibit 2.3(b)(2)(A) to this Agreement, reflecting the appropriate payment schedule under Schedule 2.1(a) to this Agreement (the "Note");

(B) the Assignment and Assumption Agreement, Mortgage (covering the Real Estate), executed Security Agreement and Pledge Agreement and all other documents required or contemplated thereunder;

(11) stake survey paid for by Seller ^{OK}

(C) the executed Noncompetition Agreement;

(D) the executed guaranty of each shareholder of Purchaser in the form of Exhibit 2.3(b)(2)(D) to this Agreement (the "Guaranty");

(E) copies of the corporate charter and bylaws of Purchaser and resolutions of its Board of Directors authorizing the execution, delivery and performance by Purchaser of this Agreement and all other agreements contemplated by this Agreement;

(F) a certificate from the Secretary of State of [Indiana], dated not more than ten days prior to the Closing Date, as to the legal existence and good standing of Purchaser under the laws of such state; and

(G) a copy of a closing statement, executed by Purchaser, showing the computation of the funds payable to Seller at Closing pursuant to this Agreement.

2.4 Escrow. Concurrently with the execution and delivery of this Agreement, Purchaser will deposit \$50,000 (which will consist of \$24,500 in immediately available funds and an irrevocable standby letter of credit in the form of Exhibit 2.4A to this Agreement in the amount of \$25,500 issued by) with an escrow agent pursuant to an Escrow Agreement in the form of Exhibit 2.4 to this Agreement (the "Escrow Agreement"). The deposit will be held (together with interest thereon) and disbursed by the escrow agent in accordance with the Escrow Agreement.

2.5 Adjustments and Prorations. All items of income and expense arising from the operation of the Station on or before 12:01 a.m., local time, on the Closing Date will be for the account of Seller and thereafter for the account of Purchaser. Proration of the items described below between Seller and Purchaser will be effective as of 12:01 a.m., local time, on the Closing Date and will occur as follows with respect to the Station Assets:

(a) Liability for state and local taxes (other than real estate taxes) assessed on the Station Assets paid or payable with respect to the tax year in which the Closing Date falls will be prorated as between Seller and Purchaser on the basis of the number of days of the tax year elapsed to and including the Closing Date, appropriately adjusted with respect to improvements to the Station Assets effected after the Closing Date.

(b) All real estate taxes on the Real Estate which first become due and payable on or after the Closing Date will be paid by Buyer. Seller shall pay and discharge all real estate taxes on the Real Estate which become due and payable prior to the Closing Date.

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(c) Prepaid items such as water, electricity, telephone, other utility and service charges, lease expenses, license fees (if any), and payments under any contracts to be assumed by the Purchaser will be prorated between Seller and Purchaser on the basis of the period of time to which such liabilities, prepaid items and accruals apply.

All prorations will be made and paid insofar as feasible on the Closing Date, with a final settlement to be made within ten business days after the Closing Date, except that any proration relating to taxes or other matters which cannot be determined with certainty on the Closing Date will be based upon reasonable estimates of such amounts and a final adjustment will be made when final invoices, vouchers or statements (as applicable) are received from the applicable third party.

3. Seller's Representations and Warranties. Seller represents and warrants to Purchaser as follows, as of this date and the Closing Date:

3.1 Organization: Good Standing. Seller is a corporation, duly incorporated, validly existing and in good standing under the laws of Michigan, is duly qualified as a foreign corporation and in good standing under the laws of Indiana, and has all requisite corporate power and authority to own and lease the Station Assets and to carry on the Station's business as currently conducted.

3.2 Due Authorization: Execution and Delivery.

(a) Subject to the issuance of the Final Order, Seller has full corporate power and authority to enter into and perform this Agreement and the Related Agreements (as defined below) to which it is a party and to carry out the transactions contemplated by this Agreement and such Related Agreements. The execution and delivery of this Agreement and the Related Agreements to which Seller is a party and the consummation of the transactions contemplated by this Agreement and such Related Agreements have been duly authorized by all necessary corporate action on the part of Seller. As used in this Agreement, "Related Agreements" are all written agreements and documents, other than this Agreement, which are executed by Purchaser or Seller pursuant to or in connection with this Agreement (including the Note, the Security Agreement, the Pledge Agreement, the Escrow Agreement and the Noncompetition Agreement), regardless of whether they are expressly referred to in this Agreement.

(b) This Agreement and each Related Agreement to which Seller is a party has been duly executed and delivered by Seller and constitutes, and each Related Agreement to which Seller will be a party which has not yet been executed and delivered when executed and delivered will constitute, a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as may be limited by the availability of equitable remedies or by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally.

(c) Neither the execution and delivery by Seller of this Agreement or the Related Agreements to which it is a party, nor the consummation by it of the transactions contemplated by this Agreement and such Related Agreements will:

(1) conflict with or result in a breach of the articles of incorporation or bylaws of Seller;

(2) subject to the issuance of the Final Order, violate any statute, law, rule or regulation or any order, writ, injunction or decree of any court or governmental authority, which violation would be expected to have a material adverse effect on the Station Assets; or

(3) violate or constitute a default under (or give rise to any right of termination, cancellation or acceleration under), any material agreement, indenture, mortgage or other instrument to which Seller is a party and by which the Station Assets may be bound or affected.

3.3 Consents. No consent, authorization, license, exemption of, filing with or other action of any court, governmental authority or administrative agency is required in connection with the execution and delivery by Seller of this Agreement or the consummation by Seller of the transactions contemplated by this Agreement, other than the consent of the FCC to the transfer of the FCC Governmental Licenses. Except as set forth on Schedule 3.3 to this Agreement, no approval, authorization or consent of any other third party which has not been obtained by the Closing is required in connection with the execution and delivery by Seller of this Agreement and the consummation of the transactions contemplated by this Agreement.

3.4 Title to and Condition of Personal Property. Seller has good title to all personal property listed on Schedule 1.1(b). None of such personal property is subject to any security interest, mortgage, pledge, conditional sales agreement, equipment lease or other lien or encumbrance except for liens for current taxes and other governmental charges not yet due and payable and existing security interests which interests shall be released at closing, or waived by Purchaser. Except as shown on Schedule 1.1(b), such personal property is available for immediate use in the business or operations of the Station and such personal property as is currently in actual use in the operation of the Station has been maintained by Seller consistent with its past practices and is in good operating condition and repair (ordinary wear and tear excepted). At Closing, the broadcast facilities of the Station will be operating in accordance with the parameters of its FCC license.

3.5 Governmental Licenses.

(a) Schedule 1.1(a) to this Agreement lists and accurately describes all Governmental Licenses necessary for the lawful ownership and operation of the Station and the conduct of the Station's business. Seller is the holder of all of the Governmental Licenses.

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(b) Each Governmental License is in full force and effect and is valid under applicable federal, state and local laws. The Station is being operated in all material respects in accordance with the terms and conditions of its Governmental Licenses and in accordance with the rules and regulations of the FCC.

3.6 Reports. Seller has duly filed all reports with respect to the Station required to be filed by law or applicable rule, regulation, order, writ or decree of any court, governmental commission, body or instrumentality and has made payment of all charges and other payments, if any, shown by such reports to be due and payable, except where the failure to so file or make payment would not have a material adverse effect upon the operations of the Station. All reports required to be filed by Seller with the FCC with respect to the Station have been filed.

3.7 Real Estate. Schedule 1.1(c) lists all interests in Real Estate that shall be assigned and transferred to Purchaser pursuant to this Agreement. Such interests are conveyed hereunder to Purchaser free and clear of all liens, mortgages, pledges, covenants, easements, restrictions, encroachments, leases, charges, and other claims and encumbrances of any nature whatsoever, [including claims involving the use, storage or existence of hazardous material,] except for any easements, etc. which are properly recorded and are listed on Schedule 1.1(c), ~~and except as would not in the aggregate have a material adverse effect on the operations of the Station.~~ Except as noted on Schedule 1.1(c), the Real Estate is available for immediate use in the business or operations of the Station. At the Closing, Seller shall convey fee simple title to the Real Estate to Purchaser by ~~Special~~ Warranty Deed, in the form attached hereto as Exhibit 3.7. NO
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3.8 Contracts. Schedule 1.2 lists and describes all existing contracts which are to be assumed by Purchaser at Closing except for advertising contracts for the sale of time on the Station for cash and substantially at rate card, which are not prepaid and which may be cancelled by Seller without penalty on not more than thirty (30) days notice (the "Advertising Contracts"). Although not required to be listed on Schedule 1.2, the Advertising Contracts shall be included in the assumed contracts assigned to Purchaser at Closing. All of such assumed contracts are in full force and effect, and are valid, binding and enforceable in accordance with their terms. There is not under any assumed contract any material default by Seller or, to Seller's knowledge, any other party thereto. Except for the consent of the FCC and third party consents, Seller has full legal power and authority to assign its rights under such assumed contracts to Purchaser in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuation of any of such assumed contracts.

3.9 Labor Relations. Seller is not a party to or subject to any collective bargaining agreements with respect to the Station. Seller, in the operation of the Station, has complied with all applicable laws, rules and regulations relating to the employment of labor, including those related to wages, hours, collective bargaining, occupational safety, discrimination,

and the payment of social security and other payroll related taxes, and it has not received any notice alleging that it has failed to comply in any material respect with any such laws, rules or regulations.

3.10 Claims, Legal Actions. ~~To Seller's actual knowledge,~~ Except as set forth on Schedule 3.10 and except for proceedings of a general nature that may affect the radio broadcast industry, there is no claim, legal action, counterclaim, suit, arbitration, governmental investigation, application or rule making proceeding, or other legal, administrative or tax proceeding, nor any order, decree or judgment, in progress or pending, or to the knowledge of Seller threatened, against or relating to Seller, the Station Assets, or the business or operations of the Station, including but not limited to any such action or proceeding under any federal, state or local law or regulation concerning the storage, use or disposition of hazardous material or substances, nor does Seller know or have reason to be aware of any basis for the same.

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[See Insert Attached]

4. Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller as follows, as of this date and the Closing Date:

4.1 Organization and Good Standing. Purchaser is a [corporation] duly incorporated, validly existing and in good standing under the laws of the State of [Indiana] and has all requisite corporate power and authority to enter into this Agreement and all Related Agreements to which it is a party, to own and lease its properties and carry on its business as currently conducted.

4.2 Due Authorization; Execution and Delivery.

(a) Subject to the issuance of the Final Order, Purchaser has full corporate power and authority to enter into and perform this Agreement and the Related Agreements to which it is a party, and to carry out its obligations under this Agreement and such Related Agreements. The execution and delivery of this Agreement and the Related Agreements to which Purchaser is a party and the consummation of the transactions contemplated by this Agreement and such Related Agreements have been duly authorized by all necessary corporate action on the part of Purchaser.

(b) This Agreement and each Related Agreement to which Purchaser is a party has been duly executed and delivered by Purchaser and constitutes, and each Related Agreement to which Purchaser will be a party but which has not yet been executed and delivered when executed and delivered will constitute, a legal, valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally or general equitable principles.

(c) Neither the execution and delivery by Purchaser of this Agreement or any Related Agreement to which it is a party nor the consummation of the transactions contemplated by this Agreement and such Related Agreements will:

3.11 Financial Statements. Seller has delivered to Purchaser true and complete copies of income statements for the Station for the years 1991 and 1992, all of which are true, correct and complete, and fairly present the results of operations of the Station for the periods indicated.

3.12 No Undisclosed Liabilities. Seller has not, and will not have any material liabilities (fixed or contingent, including without limitation any tax liabilities due or to become due) regarding the Station or the Station Assets which are not fully disclosed in the financial statements described in Section 3.11.

3.13 Taxes. All federal, state and local tax returns and tax reports required to be filed by Seller regarding the Station or the Station Assets have been filed with the appropriate governmental agencies in all jurisdictions in which such returns and reports are required to be filed; all federal, state and local income, profits, franchise, sales, use, occupation, property, excise, business and other taxes (including interest and penalties) due from Seller regarding the Station or the Station Assets have been or will be fully paid by Seller. In the event additional taxes of any kind are assessed or imposed against Seller regarding the Station or the Station Assets with respect to any period prior to the Closing Date, such additional taxes, together with interest and penalties, if any, will be paid by Seller after the Closing, and Seller shall defend, indemnify and hold harmless Purchaser from and against such additional taxes, interest and penalties.

3.14 Employees. Seller has or will deliver to Purchaser, if requested thereby, a complete and accurate list of the names and compensation of the employees of Seller in connection with the Station, together with a description of all employment agreements, bonus plans, deferred compensation plans, employee pension plans or retirement plans, employee profit sharing plans, employee stock purchase and stock option plans, hospitalization insurance, and other plans and arrangements providing for employee benefits of employees of Seller in connection with the Station. All employees of Seller in connection with the Station are employees at-will and shall have no entitlement to employment by virtue of any oral or written contract employer policy, or otherwise, and Seller and its employees in connection with the Station are not parties to any collective bargaining agreement. In connection with the Station, as of the date hereof and for the past three years, there is not, nor has there been, any strike, lock out, sit down, slow down, grievance or other labor dispute or trouble of any nature whatsoever pending or threatened against Seller or which in any manner affects Seller. All accrued obligations of Seller relating to employees in connection with the Station, whether arising by operation of law, by contract or by past service, or payments to trusts or other funds or to any governmental agency, or to any individual employee (or his legal representatives) with respect to unemployment

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compensation benefits, profit sharing or retirement benefits, or social security benefits have been paid, or shall have been paid on or before the Closing Date, by Seller. In connection with the Station, all obligations of Seller to its employees in connection with the Station, whether arising by operation of law, by contract, or by past practice, for vacation and holiday pay, bonuses, and other forms of compensation which are or may become payable to such employees have been or will be paid by it prior to the Closing Date.

3.15 The Real Estate. All buildings and other improvements on the Real Estate are located within the boundaries of the Real Estate and do not encroach upon such boundaries. No building or other improvement situated on any adjacent real estate is encroaching upon any of the boundaries of the Real Estate. The use of the Real Estate by Seller and the conduct therein of the Station have not violated, and are not expected to violate, any law, rule or regulation of any governmental body or authority. The Real Estate has water supply and sewage and waste disposal facilities, sufficient for the operation of the Station on the date hereof. The buildings and improvements located on the Real Estate and the ownership, operations and maintenance thereof as now owned, operated and maintained, do not (i) contravene any ordinances, statutes, regulations, covenants, or deed restrictions, including those relating to zoning, building use, air or water pollution, waste disposal, sanitation and noise control, or (ii) violate any provision of federal, state or local law, the effect of which materially interferes with or prevents the continued use of the Real Estate for the operation of the Station, or would materially affect the value thereof. Sale of the Real Estate will not cause the zoning for any property to become non-complying by virtue of elimination of a grandfather clause or for any other reason. Seller has maintained and repaired the buildings and other improvements on the Real Estate in a careful and prudent manner and all structures, buildings and improvements are in good repair and operating condition and contain no latent defects. The buildings and other improvements on the Real Estate, including the plumbing, electrical, mechanical, water, water pumping and sewage systems are not in violation of any applicable governmental rule or regulation or any other legal requirements, including health and fire codes and other similar regulations.

3.16 Compliance with Laws, Rules, Regulations. In connection with the operation of the Station, Seller is in compliance in all material respects with all applicable statutes, ordinances, rules, regulations, requirements, and orders of governments and governmental bodies (including, but not limited to, all applicable statutes, ordinances, regulations and codes relating to the environment, pollution, the treatment, storage or disposal of chemicals, hazardous or toxic substances or wastes, building and zoning, and related matters, and all labor-related state and federal legislation, including OSHA and COBRA) and all restrictive covenants, and Seller has not received any notice asserting any noncompliance.

3.17 Environmental Conditions. Seller has no knowledge of any fact to the contrary that the Station and the Real Estate: (i) are in full compliance with all requirements of federal, state and local environmental, health or safety laws, regulations and administrative or judicial decrees, as amended (the "Environmental Laws"); (ii) are not the subject of any "Superfund" evaluation or investigation; and (iii) are not the subject of any federal or state investigation or administrative proceeding evaluating whether any remedial action is necessary to respond to a release of any Hazardous Substance (as defined below). Neither Seller, nor, to the best of Seller's knowledge, any previous owner of the Real Estate or any third party: (a) has used, generated, stored, transported, disposed of, produced or processed any Hazardous Substance except in compliance with all Environmental Laws; (b) has caused or permitted or has any knowledge of any release, disposal or discharge of any Hazardous Substance on the Real Estate or at any other location; or (c) is obligated under law to obtain, any license, permit or permission relating to the generation, handling, storage, transportation or disposal of any Hazardous Substance with respect to the Station Assets or Real Estate. As used herein, the term "Hazardous Substance" means any toxic or hazardous waste, pollutants or substances, including, but without limitation, asbestos, PCB's, petroleum products and by-products, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9061 *et. seq.*, and any other hazardous or toxic substances or pollutants regulated under other applicable Environmental Laws.

3.18 Disclosure. Neither this Agreement nor any document, exhibit, schedule, or certificate hereto contains an untrue statement of a material fact or omits a material fact necessary to make the statements contained herein or therein not misleading.

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(1) conflict with or result in a breach of the [corporate charter] or bylaws of Purchaser;

(2) subject to the issuance of the Final Order, violate any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental authority; or

(3) violate or constitute a default under (or give rise to any right of termination, cancellation or acceleration under) any indenture, mortgage, lease, contract or other instrument to which Purchaser is a party or by which it is bound or affected.

4.3 Consents. No consent, authorization, license, exemption of, filing with or other action of any court, governmental authority or administrative agency is required in connection with the execution and delivery by Purchaser of this Agreement or any Related Agreement to which Purchaser is a party or the consummation by Purchaser of the transactions contemplated by this Agreement or any such Related Agreement, other than those of the FCC. No approval, authorization or consent of any other third party which has not been obtained is required in connection with the execution and delivery by Purchaser of this Agreement and the Related Agreements to which Purchaser is a party and the consummation of the transactions contemplated by this Agreement and such Related Agreements.

4.4 No Control. Before the Closing Date, Purchaser will not, directly or indirectly, control, supervise or direct the operation of the Station. Such operation, including complete control and supervision of all programs, will be the sole responsibility of Seller.

4.5 Qualification of Purchaser. Except as set forth on Schedule 4.5 to this Agreement, Purchaser does not have any knowledge of any facts or proceedings which are reasonably likely to disqualify it under the Communications Act of 1934, as amended from time to time, the rules and regulations promulgated thereunder, and the policies of the FCC in respect thereof, from acquiring or operating the Station or which might otherwise cause the FCC not to approve the transfer of control of the Governmental Licenses to Purchaser.

5. Covenants and Agreements.

5.1 Affirmative Covenants. Between the date of this Agreement and the Closing Date and subject to Purchaser's compliance with the Joint Operating Agreement described in Section 14.10 below, Seller will: OK
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(a) conduct the business and operations of the Station in the ordinary course of business and in conformity with all applicable laws, rules and regulations;

(b) give to Purchaser and its authorized representatives, reasonable access during normal business hours to the properties, premises, books and records of the Station as they may reasonably request;

(c) maintain all of the Personal Property in its present condition, ordinary wear and tear excepted and maintain normal and customary levels of inventory and spare parts, consistent with the past practices of the Station; and

(d) conduct the business and operations of the Station in all ~~material~~ respects in accordance with the Communications Act of 1934, as amended, with all applicable FCC rules and regulations. NO

5.2 Negative Covenants. Between the date of this Agreement and the Closing Date, Seller shall not:

(a) create, assume or permit to exist unless specifically provided for herein any mortgage, pledge, lien or other charge or encumbrance or rights affecting any of the Station Assets;

(b) sell, assign, lease or otherwise transfer or dispose of any of the Station Assets, except for the repair or replacement of equipment in the ordinary course of business, without the prior written consent of Purchaser, such consent not to be unreasonably withheld;

(c) enter into, renew or extend any contracts or agreements to be assumed by Purchaser after the Closing that are not in the ordinary course of business or are for the sale of advertising time for trade of merchandise or services, or for consideration other than cash;

(d) cause or permit, by any act or failure to act, the Governmental Licenses listed on Schedule 1.1(a) to expire or to be surrendered or modified, or take any action which would cause the FCC or any other governmental authority to institute proceedings for the cancellation or modification thereof, fail to prosecute with due diligence any pending application to the FCC, or take any other action within its control which would result in the Station being in non-compliance with the requirements of the Communications Act, or any other applicable law, or any FCC rules and regulations ~~(or any governmental authority having jurisdiction material to the transactions contemplated by this Agreement).~~ OK

5.3 FCC Applications/Waiver/Other Consents.

(a) As soon as practicable after the execution and delivery of this Agreement, Seller and Purchaser will file an application requesting FCC consent to the assignment from Seller to Purchaser of all FCC Governmental Licenses. The FCC assignment application will be prosecuted by both parties in good faith and with due diligence. The parties will use their best efforts to file additional information or amendments requested by the FCC orally or in writing as promptly as possible after such request and to complete and file such information with the FCC as rapidly as practical. Neither party will take or fail to take any action which could reasonably be expected to hinder or delay the assignment application process.

good and marketable title in fee simple, and which shall not disclose any liens, claims, mortgages, obligations, security interests, easements, restrictions or other encumbrances, except as may be acceptable to Purchaser

(b) Each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of the FCC assignment application, except that the parties will share, on a 50/50 basis, the FCC filing fee with respect to such application.

(c) Each party will use all necessary and reasonable means at its disposal to obtain all other necessary consents and approvals of other persons and governmental authorities required to enable it to consummate the transactions contemplated by this Agreement. Each party will make all filings, applications, statements and reports to all governmental agencies or entities which are required to be made before the Closing Date by or on its behalf pursuant to any statute, rule or regulation in connection with the transactions contemplated by this Agreement.

(d) Each party will provide to the other party copies of all filings, applications, statements and reports submitted under this Section 5.3.

Written

5.4 Public Announcements/Confidentiality. Before the Closing Date, all notices to third parties and other publicity relating to the transactions contemplated by this Agreement will be jointly planned by and subject to the joint approval of Seller and Purchaser. Neither Purchaser nor Seller will at any time use or disclose any confidential or non-public proprietary information concerning the other which it has obtained in connection with this transaction. However, each party will be free to make such disclosure to its lenders and advisors as is necessary and appropriate in connection with its evaluation and performance of this Agreement and the Related Agreements.

5.5 Accounts Receivable. ~~Concurrently with the execution and delivery of this Agreement, Seller has assigned to Purchaser, for purposes of collection only, all accounts receivable with respect to the Station as of this date (the "Accounts Receivable").~~ Payment of the Station's Accounts Receivable shall be made in accordance with the terms of the Joint Operating Agreement dated December 18, 1992 between Seller and Pathfinder Communications Corporation. ~~Note: Need to check terms of Joint Operating Agreement.~~

5.6 Commitment For Title Insurance. As soon as practicable after the date of this Agreement, Seller will deliver to Purchaser a commitment for title insurance covering the Real Estate issued by a title company ~~doing business in Indiana~~ and for an amount not less than \$_____, guaranteeing ~~title in the condition required by this Agreement~~, bearing a date later than the date of this Agreement; such title commitment will be accepted as a sufficient showing of title to the Real Estate. If objection to title is made, based upon a written opinion of Purchaser's attorney, that the title is not in the condition as required ~~for performance under this Agreement~~, Seller will have 30 days from the date it is notified in writing of any ~~valid~~ claimed defect either (a) to remedy the title OR (b) to have the title company delete any such objection from title insurance, ~~or (c) to terminate this agreement~~. If Seller remedies the title or obtains such title

AT THE CLOSING SUCH AGREEMENT SHALL BE ASSIGNED BY SELLER TO PURCHASER AND AFTER CLOSING SELLER SHALL REFUND TO PATHFINDER COMMUNICATIONS CORPORATION ANY AMOUNTS PAID FOR ACCOUNTS WHICH LATER BECOME UNCOLLECTIBLE.

PURCHASER may elect to terminate this Agreement
PURSUANT TO SECTION 11(d) below.

OK

insurance within such 30 days, Purchaser will complete the sale by the Closing Date. If Seller fails to remedy the title or obtain such title insurance or to give Purchaser the appropriate written notification pursuant to this Section 5.6 within such 30 days, ~~this Agreement will be deemed to have terminated in accordance with Section 11(e) below.~~

[SEE INSERT ATTACHED]

6. Conditions to Purchaser's Closing Obligations. All obligations of Purchaser under this Agreement will be subject to the fulfillment at or before the Closing of the following conditions (except that Purchaser may, in its sole discretion, waive any such condition in whole or in part):

6.1 Covenants; Representations, Etc. Seller will have delivered the documents required under Section 2.3(a) above and performed in all ~~material~~ respects the other covenants contained in this Agreement that are to be performed by it at or before the Closing; and the representations and warranties of Seller contained in this Agreement will be true and correct, ~~in all material respects~~ as of the Closing Date.

6.2 Consents. The Final Order will be in full force and effect and all other consents and approvals from governmental agencies and third parties (unless the failure to obtain such third party consents would not have a material adverse effect on the Station) required to be obtained by Seller under Section 3.3 above will have been obtained without material cost or other materially adverse consequence to Purchaser and will be in full force and effect.

6.3 No Adverse Litigation. Except for claims instituted by Purchaser, no order or preliminary or permanent injunction will have been entered and no action, suit or other legal or administrative proceeding by any court or governmental authority, agency or other person will be pending or threatened on the Closing Date which may have the effect of (a) making any of the transactions contemplated by this Agreement illegal, (b) materially adversely affecting the value of the Station Assets or (c) making Purchaser liable for the payment of damages to any person with respect to this transaction.

[SEE INSERT ATTACHED]

7. Conditions to Seller's Closing Obligations. All obligations of Seller under this Agreement will be subject to the fulfillment at or before the Closing of the following conditions (except that Seller may, in its sole discretion, waive any such condition in whole or in part):

7.1 Covenants; Representations, Etc. Purchaser will have taken the actions required of it under Section 2.3(b) above and performed in all material respects the other covenants contained in this Agreement that are to be performed by Purchaser at or before the Closing; and the representations and warranties of Purchaser contained in this Agreement will be true and correct in all material respects as of the Closing Date.

INSERT PAGE 12 AT END OF PARAGRAPH 5

5.7 No Shop Clause. Seller shall not, directly or indirectly, sell or encumber all or any part of the assets or stock of Seller, other than in the ordinary course of business, consistent with past practice, or initiate or participate in any discussions or negotiations or enter into any agreement to do any of the foregoing. Seller shall not provide any confidential information concerning the Station or its properties or assets to any third party other than in the ordinary course of business. OK
LIMIT TO
STATION
ASSETS

5.8 Survey. Within thirty (30) days of the date hereof, Seller, at its expense, shall provide Purchaser with a stake survey of the Real Estate to the reasonable satisfaction of Purchaser, prepared by a registered land surveyor reasonably satisfactory to Purchaser, certified by the surveyor to Purchaser, showing: (i) the boundaries of the Real Estate; (ii) any easements of record; (iii) that all improvements on the Real Estate are located within its boundaries; (iv) that no improvements on the Real Estate is encroaching on the property of others; (v) that no property owned by others is encroaching on the Real Estate; and (vi) showing sufficient detail to enable the title company to issue the policy of title insurance without boundary, encroachment, or survey exceptions. OK

5.9 Compliance With Indiana Disclosure Law. Seller agrees to comply with the Indiana Responsible Property Transfer Law and to provide Purchaser with the required disclosure statement and to file such disclosure statement with the Indiana Department of Environmental Management as is required by such act. OK

INSERT PAGE 12 AT END OF PARAGRAPH 6

6.4 Officer's Certificate. Seller shall cause to be delivered to Purchaser a certificate signed by an officer of Seller, dated the Closing Date, as to the matters set forth in Section 6.1, and that no material adverse change in the business of the Station, financial condition, or physical condition of the Station Assets since the date of this Agreement, in form and substance satisfactory to Purchaser.

6.5 No Casualty. Prior to the Closing Date, Seller shall not have incurred, or be threatened with, a material liability or casualty which would impair the value of the Station or the Station Assets in an amount in excess of \$50,000.

✓ FULLY UNDER DILLER
CONTROL

DON'T WANT TO
GIVE FOR THIS
REASON

KZFS1\89434.1-040363-00002

HICKS 898

7.2 Consents. The Final Order will be in full force and effect and all other consents and approvals from governmental agencies and third parties required to be obtained by Purchaser pursuant to Section 4.3 above will have been obtained without material cost or other materially adverse consequence to Seller and will be in full force and effect.

7.3 No Adverse Litigation. Except for claims instituted by Seller, no order or preliminary or permanent injunction will have been entered and no action, suit or other legal or administrative proceeding by any court or governmental authority, agency or other person will be pending or threatened on the Closing Date which may have the effect of (a) making any of the transactions contemplated by this Agreement illegal or (b) making Seller liable for the payment of damages to any person with respect to this transaction.

8. Survival. All representations and warranties made by the parties will survive the Closing; provided that any cause of action based on a breach of a representation or warranty will terminate and not survive after ~~one~~ ^{one} years from the Closing Date, unless notice of a claim based on specific circumstances has been given prior to the expiration of such one-year period.

9. Indemnification.

9.1 By Seller. Subject to Sections 8 above and 9.3 below, Seller will indemnify and hold Purchaser harmless from and against any claims, actions, obligations, liabilities, penalties and expenses (including reasonable attorneys' fees and expenses) arising by reason of or in connection with:

(a) any breach of Seller's representations, warranties or covenants under this Agreement; or

(b) the ownership of the Station Assets and operation of the Station before the Closing Date, except to the extent specifically assumed by Purchaser pursuant to this Agreement;

9.2 By Purchaser. Subject to Sections 8 above and 9.3 below, Purchaser will indemnify and hold Seller harmless from and against any claims, actions, obligations, liabilities, penalties and expenses (including reasonable attorneys' fees and expenses), arising by reason of or in connection with:

(a) any breach of Purchaser's representations, warranties or covenants under this Agreement;

(b) the ownership of the Station Assets and operation of the Station after the Closing Date, except to the extent they arise from a breach of any representation, warranty or covenant of Seller under this Agreement; or the ownership and operation of the Station prior to the Closing Date; or

(c) any of the Assumed Liabilities.

Joint or comparative negligence, breach of contract or warranty, strict or product liability or any other legal theory

NO - ONE YEAR
ALREADY
NEGOTIATED
WITH
DILL

CHECK
THIS
OUT

9.3 General Rules Regarding Indemnification. The indemnification obligations of an indemnifying party under this Agreement will be subject to the following:

(a) The indemnified party will give prompt written notice to the indemnifying party of any claim which might give rise to a claim by the indemnified party against the indemnifying party under this Agreement, stating the nature, basis and amount of such claims.

(b) If any claim or proceeding is brought against the indemnified party with respect to which the indemnifying party may have liability under this Agreement, the claim or proceeding will, upon the written acknowledgement by the indemnifying party that it is obligated to indemnify under this Agreement, be defended by the indemnifying party. The indemnified party will have the right to employ its own counsel in any such investigation or proceeding, but the fees and expenses of such counsel will be at the indemnified party's own expense unless (1) the employment of such counsel and the payment of such fees and expenses both have been specifically authorized in writing by the indemnifying party in connection with the defense of such claim or proceeding or (2) counsel to such indemnified party has reasonably concluded and specifically opined to the indemnifying party that there may be a conflict of interest between the indemnified party and the indemnifying party which makes separate representation necessary; in either case, the indemnifying party will not have the right to direct the defense of such claim or proceeding on behalf of the indemnified party, but only that portion of such fees and expenses of the indemnified party's separate counsel reasonably related to matters covered by the applicable indemnification provision of this Agreement will be borne by the indemnifying party. The indemnified party will be kept fully informed of such action, suit or proceeding at all stages regardless of whether it is represented by separate counsel.

(c) The indemnified party will make available to the indemnifying party and its attorneys and accountants all books and records of the indemnified party relating to such claim or proceeding. The parties will render to each other such assistance as they may reasonably require of each other in order to ensure the proper and adequate defense of any such action, suit or proceeding.

(d) The indemnified party will not make any settlement of any indemnifiable claim or proceeding without the written consent of the indemnifying party, which consent will not be unreasonably withheld or delayed.

(e) No claim for indemnification will be made under Section 9.1 above unless and until Purchaser has first incurred liabilities for which it would be entitled to indemnification under this Agreement of at least \$12,500.

10. Risk of Loss. Seller will bear the risk of all damage to, loss of or destruction of any of the Station Assets between the date of this Agreement

\$5,000
NO -
AGREED
TO
12,500
19

and the Closing Date. If any material portion of the Station Assets suffers any material damage or destruction before the Closing Date, Seller will promptly notify Purchaser in writing of such damage or destruction, and promptly take all necessary steps to restore, repair or replace such assets at its sole expense. Seller may extend the Closing Date for a period not exceeding 45 days to accomplish such restoration, repair or replacement, but is not required to do so. If such restoration, repair or replacement is not accomplished to the reasonable satisfaction of Purchaser before the Closing Date, regardless of whether extended, Purchaser may, at its option:

(a) terminate this Agreement upon written notice to Seller; or

(b) receive all insurance proceeds paid or payable to Seller in excess of amounts actually applied towards such restoration, repair or replacement, close this Agreement and thereafter complete such restoration, repair or replacement at Seller's expense.

In addition, if the Station is off the air or is unable to operate with its licensed facilities for (a) a total of twenty hours during any consecutive two day period, or (b) a total of forty hours during any consecutive thirty day period, Purchaser may terminate this Agreement and all of its obligations hereunder.

11. Termination Rights. This Agreement may be terminated as follows:

(a) by either Purchaser or Seller, if the Closing has not occurred on or before August 1, 1994 and if Sections 11(b) or (c) below do not apply;

(b) by either Purchaser or Seller, if the other party is in default in the observance or due and timely performance of any of its obligations under this Agreement (including the breach of a representation and warranty or covenant) and such default has not been cured within 30 days of written notice of such default by the non-defaulting party;

(c) subject to Sections 6, 7 and 10 above, by Seller or Purchaser if ~~on the Closing Date~~ any of the conditions precedent to its obligations set forth in this Agreement have not been satisfied or waived by such party and ~~it~~ has satisfied all of its obligations, ~~or~~ if it becomes clear before Closing that any such condition precedent will not be capable of being so satisfied ~~(including Purchaser's breach of the Escrow Agreement)~~;

(d) ~~by Seller pursuant to Section 5.6(e) above or by Purchaser pursuant to Section 10(a) above; or~~ ^{whether on the Closing Date or prior thereto}

(e) by mutual consent of Seller and Purchaser.

Notice of termination of this Agreement must be given in writing pursuant to Section 14.2 below.

12. Effect of Termination.

Doesn't 11(a)-(e) cover every possible termination event??

LAWYERS TO DISCUSS

12.1 Termination Pursuant to Sections 11(a) through (e). If this Agreement terminates pursuant to Sections 11(a) through (e) above, the provisions of Section 2 of the Escrow Agreement will govern and neither party will be liable to the other in any respect other than as provided in the Escrow Agreement and Section 12.2 below.

12.2 Other Termination. If this Agreement is terminated by a party other than pursuant to Sections 11(a) through (e) above, the terminating party will be liable to the other party for the total amounts held or required under the terms of the Escrow Agreement to be held by the escrow agent under the Escrow Agreement at the time of such termination; subject to Section 12.3 below, such payment will be the non-terminating party's exclusive remedy with respect to such termination.

Insert New Section 12.2

12.3 Section 14.10 Below. Notwithstanding the preceding provisions of this Section 12, any amounts payable to Seller by Purchaser under Section 14.10 below will be paid to Seller immediately upon termination of this Agreement.

13. Expenses. Brokers.

13.1 Expenses. Except as otherwise expressly provided in this Agreement, each party will pay the fees and expenses incurred by it in connection with the transactions contemplated by this Agreement.

13.2 Brokers. Seller and Purchaser each represent and warrant to the other that all introductions and negotiations relative to this Agreement and the transactions contemplated by this Agreement have been carried on without the intervention of any other person on its behalf in such manner as to give rise to any valid claim against any of the parties for a brokerage commission, finder's fee or like payment. Seller and Purchaser will each indemnify and hold the other harmless against any losses, claims or liabilities resulting from its breach of this representation and warranty, without any limitation as to amount or time within which claim is made.

13.3 Disputes. If any action is brought to enforce this Agreement or defend the validity of this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, court costs and other reasonable expenses incurred by it in such action, in addition to its other remedies and damages.

14. Miscellaneous.

14.1 Amendment. This Agreement may be amended at any time but only by an instrument in writing signed by both parties.

14.2 Notices. All notices and other communications under this Agreement will be in writing and be deemed given upon the receipt thereof by the

12.2 Failure to Consummate Transaction by Purchaser. If the transactions contemplated in this Agreement are not consummated for any reason which would give Purchaser the right to terminate this Agreement under Sections 11(b) or (c) because of Seller's action or failure to act, then Purchaser shall be entitled to the return of its Escrow Funds under the Escrow Agreement; and, either (i) Purchaser shall be entitled to terminate this Agreement and to seek monetary damages for all costs and expenses incurred by Purchaser in connection with the preparation, negotiation, execution and performance of this Agreement, or (ii) Purchaser shall be entitled to enforce the Agreement against the Seller by specific performance or other similar equitable or legal remedy.

recipient if delivered personally or mailed by certified mail, return receipt requested, or by nationally recognized "next-day" delivery service, to the parties at the addresses set forth below (or at such other address for a party as may be specified by like notice), or sent by facsimile to the number set forth below (or such other number for a party as may be specified by proper notice):

If to Purchaser:

^
P.O. Box 487
Elkhart, Indiana 46515
Fax: (219) 294-4014
Attn: David L. Hicks

WITH A COPY TO

ERIC V BROWN JR
MILLER, CANFIELD, PADDOK & STONE
444 WEST MICHIGAN AVE
KALAMAZOO, MICHIGAN 49007

If to Seller:

333 W. Fort Street
Detroit, Michigan 48226
Fax: (313) 965-1160
Attn: John L. Booth, II

14.3 Assignment. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors, heirs and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations under this Agreement will be assigned by either of the parties without the prior written consent of the other.

14.4 Counterparts. This Agreement may be executed in counterpart, each of which will be deemed an original.

14.5 Entire Agreement. This Agreement and the Related Agreements, the attached exhibits and the other documents referred to in this Agreement contain the entire understanding of the parties in respect of the subject matter contained in this Agreement. There are no restrictions, promises, warranties, conveyances or undertakings other than those expressly set forth in this Agreement and such other documents. This Agreement supersedes all prior agreements and understandings between the parties with respect to its subject matter.

14.6 Waiver. No attempted waiver of compliance with any provision or condition of this Agreement, or consent pursuant to this Agreement, will be effective unless evidenced by an instrument in writing by the party against whom the enforcement of any such waiver or consent is sought.

14.7 No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties and their permitted successors and assigns, and no other person will be deemed to be a third party beneficiary or shall be entitled to derive any benefit from this Agreement.

14.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

14.9 Further Assurances. From time to time following the Closing, at the request of Seller or Purchaser and without further consideration, the other party shall execute and deliver to the requesting party such instruments and documents and take such other action as such requesting party may reasonably request or as may be otherwise necessary to more fully and effectively convey and transfer to, and vest in, Purchaser, and put Purchaser in possession of, any part of the Station Assets and to otherwise consummate the transactions contemplated by this Agreement.

14.10 Joint Operating Agreement. As a condition to Closing, the joint operating agreement dated December 18, 1992 between Seller and Pathfinder Communications Corporation ("PCC") will be assigned to Purchaser, effective upon the Closing Date. Purchaser will promptly remit, or will cause PCC to promptly remit, to Seller any amounts which may be due to Seller in respect of such termination, in accordance with the joint venture agreement.

In witness whereof, the parties have executed this Agreement on the date set forth in the introductory paragraph of this Agreement.

BOOTH AMERICAN COMPANY

By: _____
John L. Booth, II, President

By: _____

By: _____

Its: _____

B9876a



Exhibit 2.4

Purchaser - change throughout

[add assignee language]

ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into on October __, 1993 among ("*Buyer*") Booth American Company ("*Seller*") and Honigman Miller Schwartz and Cohn (the "Escrow Agent"). *[Assignee language]*

RECITALS

A. Buyer and Seller have entered into a purchase agreement and certain related documentation (the "Purchase Agreement") for the purchase by Buyer of certain assets of radio station WRBR (FM) in South Bend, Indiana (the "Radio Station").

B. Buyer has today deposited \$24,500 in cash and a \$25,500 irrevocable standby letter of credit issued by , in form attached to this Agreement (the "Letter of Credit") as a good faith deposit of its performance under the Purchase Agreement.

Therefore, the parties agree as follows:

1. Appointment of Escrow Agent and Deposit of Escrow Funds.

(a) Buyer and Seller appoint and designate the Escrow Agent to serve as such under this Agreement, and the Escrow Agent accepts such appointment. The Escrow Agent will serve under this Agreement without compensation.

(b) Buyer has today deposited \$24,500 and the Letter of Credit with the Escrow Agent. (The deposit, described in the preceding sentence, the earnings thereon and the Letters of Credit are referred to in this Agreement as the "Escrow Funds".) The Escrow Agent will receive, hold and deliver the cash portion of Escrow Funds in an escrow account pursuant to this Agreement and will hold the Letter of Credit for the parties.

- cash portion of the
(c) The Escrow Funds will be deposited in an interest bearing account at Comerica Bank, Detroit, Michigan, which will be maintained until disbursement of the Escrow Funds pursuant to paragraph 2 below.

2. Disbursement of the Escrow Funds. The Escrow Agent will hold the Escrow Funds until the earliest to occur of the following:

(a) If Buyer and Seller give the Escrow Agent joint instructions as to the disposition of the Escrow Funds, the Escrow Agent will disburse the Escrow Funds in accordance with such instructions.

(b) Subject to paragraphs ~~2(a), 2(b) and (c)~~ ^{2(f)} below, if either party notifies the Escrow Agent that the Purchase Agreement has been terminated pursuant to Section 11(a) of the Purchase Agreement, the Escrow Agent will disburse the Escrow Funds to Buyer and the Letter of Credit will be returned to Buyer.

or (e)

(mutual consent)

Report No. <u>10-26-01</u>	Disposition
Presented by <u>W. J. H. Jones</u>	Accepted <u>11-5-97</u>
Identified <u>11-5-97</u>	Rejected <u>11-5-97</u>
Federal Communications Commission	Exhibit No. <u>18</u>

(*) - [Note - THE PARTIES ARE DISCUSSING RETAINING LETTER
OF CREDIT UNTIL PAYMENT OF \$105,000 IN 12TH MONTH -
DOCUMENTS DO NOT REFLECT
2(f)]

(c) Subject to paragraphs ~~2(e), (f) and (h)~~ ^{2(f)} below, the Escrow Agent will disburse the Escrow Funds to Buyer and the Letter of Credit will be returned to Buyer if (1) Buyer has notified the Escrow Agent in writing that it is terminating the Purchase Agreement pursuant to Section 11(b), (c) or (d) of the Purchase Agreement, ~~or (2) Seller has terminated the Purchase Agreement pursuant to Section 11(d) of the Purchase Agreement.~~

(d) Subject to paragraphs ~~2(e), (f) and (h)~~ ^{2(f)} below, if Seller has notified the Escrow Agent in writing that it is terminating the Purchase Agreement pursuant to Section 11 (b) or (c) of the Purchase Agreement, the Escrow Agent will disburse the Escrow Funds to Seller, ~~and Seller will be entitled to full payment under the Letter of Credit in accordance with its terms.~~

NOT
NECESSARY

(e) Subject to paragraphs 2(f) and (h) below, if either Buyer or Seller notifies the Escrow Agent that the transaction has not closed, or will not be capable of closing, in the manner required by the Purchase Agreement because of the failure of the FCC to consent to the transfer of the Radio Station's license and approvals to Buyer on or before August 1, 1995 (or for such consent to be granted but to not become a final order on or before such date), due to an adjudication by the FCC that Buyer is not qualified to be a transferee of such license and approvals under applicable law and regulation (except as a result of a change in such laws or regulations after the six month anniversary of the date of this Escrow Agreement), the Escrow Agent will ~~disburse the Escrow Funds to Seller and Seller will be entitled to full payment under the Letter of Credit in accordance with its terms.~~ ^{return to Buyer} will be

TERMINATES
AT CLOSING

(f) If Seller notifies the Escrow Agent that Buyer has not timely made the complete payment called for under Section 2.3(c) of the Purchase Agreement, the Escrow Funds and all earnings thereon will be immediately disbursed to Seller and Seller will be entitled to full payment under the Letter of Credit in accordance with its terms.

~~(g)~~ The notifying party and the Escrow Agent will each give a copy of such notice (the "Notice") from Buyer or Seller, as the case may be (the "Notifying Party"), to the other party (the "Notified Party").

~~(h)~~ If the Escrow Agent does not receive a written objection to the Notice from the Notified Party before the 10th day following its receipt of the Notice, the Escrow Agent will disburse the Escrow Funds as called for by the Notifying Party. If the Escrow Agent timely receives a copy of a written objection from the Notified Party to the Notice, the provisions of Section 4 below will apply.

3. Escrow Agent's Duties. The Escrow Agent will be under no duty or obligation to give any notice, or to do or to omit the doing of any action with respect to the Escrow Funds, except to give notice, make disbursements and deposit the Escrow Funds in accordance with the terms of this Agreement. The Escrow Agent will not be liable for any error in judgment or any act or steps taken or permitted to be taken in good faith, or for any mistake of

law or fact, or for anything it may do or refrain from doing in connection with this Agreement, except for its own willful misconduct or gross negligence (including a disbursement made in violation of this Agreement). The Escrow Agent will not be required in any way to determine the validity or sufficiency, whether in form or substance, of any instrument, document, certificate, statement or notice referred to in this Agreement or contemplated by this Agreement, or the identity or authority of the persons executing it, and it will be sufficient if any writing purporting to be such instrument, document, certificate, statement or notice is delivered to the Escrow Agent and purports to be correct in form and signed or otherwise executed by the party or parties required to sign or execute it under this Agreement.

4. Right of Interpleader. If any controversy arises between or among Buyer and Seller, or any other person, firm or entity, with respect to this Agreement or the Escrow Funds, or the Escrow Agent is in doubt as to what action to take, the Escrow Agent will (a) withhold delivery of the Escrow Funds until the controversy is resolved by a court of competent jurisdiction, the conflicting demands are withdrawn or the doubt is resolved, ~~or~~ (b) institute a bill of interpleader in a court in Michigan to determine the rights of the parties (in which case the Escrow Agent will withhold delivery of the Escrow Funds until paid into the court in accordance with Michigan state law). If a bill of interpleader is instituted, or if the Escrow Agent is threatened with litigation or becomes involved in litigation in any manner whatsoever on account of this Agreement or the Escrow Funds, as between themselves and the Escrow Agent, Buyer and Seller, jointly and severally, will pay the Escrow Agent its reasonable attorneys' fees and any other disbursements, expenses, losses, costs and damages of the Escrow Agent in connection with or resulting from such threatened or actual litigation. All costs and expenses of such controversy will be charged to the non-prevailing party in such controversy.

or (c)
[provide
for arbit-
ration]

, attorneys'
fees,

5. Indemnity. Buyer and Seller, jointly and severally, will indemnify the Escrow Agent against and hold the Escrow Agent harmless from any losses, costs, damages, expenses, claims, and attorneys' fees suffered or incurred by the Escrow Agent as a result of, in connection with or arising from or out of the acts or omissions of the Escrow Agent in performance of or pursuant to this Agreement, except such acts or omissions as may result from the Escrow Agent's willful misconduct or gross negligence.

6. Resignation. The Escrow Agent may resign upon 30 days' prior written notice to Buyer and Seller, and, upon joint instructions from Buyer and Seller, will deliver the Escrow Funds to any designated substitute Escrow Agent selected by Buyer and Seller. If Buyer and Seller fail to designate a substitute Escrow Agent within 10 days, the Escrow Agent may, at its sole discretion, institute a bill of interpleader as contemplated by Section 4 above.

7. Termination. Upon delivery of the Escrow Funds as provided in Section 2 above or upon the institution of a bill of interpleader as

provided in Section 4 above, this Agreement will terminate except for the provisions of Section 5 above.

8. Notices. Any notice or communication under this Agreement must be in writing and given by (a) deposit in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, (b) delivery in person or by Federal Express or similar courier service providing evidence of delivery, or (c) confirmed transmission by facsimile transmission, telegram or telex. Each notice or communication that is mailed, delivered, or transmitted in the manner described above will be deemed sufficiently given, served, sent and received, in the case on which it is mailed, five days after the posting thereof, and, in the case of notices delivered by hand, courier service, facsimile, telegram or telex, at such time as it is delivered to the addressee (with the delivery receipt or the affidavit of messenger) or at such time as delivery is refused by the addressee upon presentation. For the purpose of notice, the addresses of the parties will be:

If to Buyer:

P.O. Box 487
Elkhart, Indiana 46515
Fax: (219) 294-4014
Attn: David L. Hicks

If to Seller:

333 West Fort Street
Detroit, Michigan 48226
Fax: (313) 965-1160
Attn: John L. Booth, II

If to the Escrow Agent:

Honigman Miller Schwartz and Cohn
2290 First National Building
Detroit, Michigan 48226
Fax: (313) 962-0176
Attn: David Foltyn

Any party may change its address for notice by written notice given to the other parties.

9. Choice of Laws: Cumulative Rights. This Agreement will be construed under the laws of the State of Michigan. All of the Escrow Agent's rights under this Agreement are cumulative of any other rights it may have by law or otherwise.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and such counterparts together will constitute an original.

11. Binding Effect. This Agreement and the rights, interests and obligations under this Agreement will be binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

WITH A COPY TO
ERIC V. BROWN, SR.
MILLER, CANFIELD
444 WEST MICHIGAN
KALAMAZOO, MIC
49001

12. Escrow Agent's Representation of Seller. Buyer is aware that the Escrow Agent is representing Seller in connection with the transactions contemplated by the Purchase Agreement, this Agreement or otherwise. The Escrow Agent is, and will remain, free to represent Seller in any action with respect to the Escrow Funds or otherwise arising out of or relating to the transactions provided for in the Purchase Agreement, this Agreement or otherwise.

In Witness Whereof, the parties have executed this Agreement on the date set forth in the introductory paragraph of this Agreement.

By: _____

Its: _____

Booth American Company

By: _____
John L. Booth, II, President

Honigman Miller Schwartz and Cohn

By: _____
Partner

B9883a

HICKS 970



NONCOMPETITION AGREEMENT

This Noncompetition Agreement ("Agreement") is entered into on _____, 199_ between Booth American Company ("Booth") and _____ ("Purchaser").

RECITALS

A. The parties are parties to an asset purchase agreement dated October __, 1993, pursuant to which Booth has today sold the operating assets of radio Station WRBR(FM), in South Bend, Indiana (the "Station"), to Purchaser (the "Purchase Agreement").

B. As an inducement to Purchaser's entering into the Purchase Agreement, Booth has agreed to enter into this Agreement.

Therefore, the parties agree as follows: be employed, contract etc. or its affiliates

1. During the Term (as defined in paragraph 2 below), Booth will not directly or indirectly own, ~~or~~ consult with any radio broadcast station which operates a main transmitter site which is located within a 50 mile radius of the geographic coordinates of the Station's existing transmitter site (a "Competing Station").

2. The term of this Agreement (the "Term") will begin on the date of this Agreement and continue until the first to occur of ~~(a) the fifth anniversary of this date; (b) the date~~ announces the sale of WRBR; and (c) Purchaser's breach of or default under the Purchase Agreement or the Note, the Mortgage, the Security Agreement or the Pledge Agreement (as defined in the Purchase Agreement), or any other material agreement between the parties.

3. This Agreement is intended, among other things, to protect profit potential acquired by Purchaser in its acquisition of Station assets pursuant to the Purchase Agreement. Therefore, in addition to its other remedies, Purchaser will be entitled to specific enforcement of Booth's obligations under this Agreement.

4. The consideration for this Agreement is ~~\$225,000~~ -0- payable in accordance with Section 2.1(a) and Schedule 2.1(a) of the Purchase Agreement.

5. (a) This Agreement will be governed by and construed in accordance with Indiana Law.

(b) This Agreement is the parties' entire agreement concerning its subject matter and can only be amended in a written instrument signed by both parties.

Report No. MM-97-66 Exhibits No. 19
Federal Communications Commission
Disposition
Identified ☒ 11-4-98
Rejected ☒ 11-4-98
Rejected ☒ 10-26-98
Reporter Stolms 11-4-98 LB-92-01

(c) The provisions of this Agreement will be deemed severable. If any part of any provision of this Agreement is held unenforceable under applicable law, such provision may be changed to the extent reasonably necessary to make this Agreement enforceable to the maximum extent permitted by law; if any provision is unenforceable, the remainder of this Agreement will be enforceable to the maximum extent permitted by law.

BOOTH AMERICAN COMPANY

By: _____
John L. Booth, II, President

^ _____
By: _____
~~John F. Dille, III, President~~

B9913a

HICKS 995



Schedule 2.1(a)PAYMENT OF TRANSACTION CONSIDERATION

A. Unless otherwise defined in this Schedule, all capitalized terms used in this Schedule have the meanings given to them in the Purchase Agreement.

B. All payments will be made in immediately available funds on the first business day of the applicable month, except for Closing Date payments.

C. Seller shall be entitled to accelerate all future payments in the event of any late payment or other default as specified in the Note, except that the Note shall provide that the Purchaser shall have thirty (30) days from the receipt of notice of any default which has not previously occurred (other than a payment default) within which to cure the default before Seller may accelerate all future payments.

D. Interest will accrue on all past due amounts at an annual interest rate equal to the lesser of (1) 4% above the prime rate charged by Comerica Bank at the time of such default (adjusted on an annual basis) and (2) the maximum interest rate allowable under applicable law.

1. Subject to paragraph 2 below, Purchaser will pay Seller:

(a) ⁹~~six~~ monthly payments of \$5,000 each, beginning on the ~~six~~ month anniversary of the Closing Date;

(b) 15 monthly payments of \$10,000 each beginning on the first day of the month immediately after payments under paragraph 1(a) above are completed;

(c) 15 monthly payments of \$15,000 each, beginning on the first day of the month immediately after payments under paragraph 1(b) above are completed; and

(d) a balloon payment, on the first day of the month immediately following the completion of payments under paragraph 1(c) above, equal to the difference between (1) the sum of \$660,000, plus interest on any late payments which has not by then been paid, plus any other amounts then owed to Seller by Purchaser, minus (2) the amounts actually paid to such date under paragraphs 1(a) - (c) above and 2 below.

2. (a) Purchaser will pay Seller \$105,000 on the first anniversary of the date of the Purchase Agreement.

(b) Upon payment of the \$105,000 pursuant to paragraph 2(a) above, the payment schedule under paragraph 1 above will be ~~suspended~~ ^{ELIMINATED} for one year, i.e., the remaining six payments under paragraph 1(b) and the payments under 1(c) and (d) will begin on the first day of the first month after the second anniversary of the Closing Date.

HICKS 981

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{ TO BE CHANGED PURSUANT TO AGREEMENT
OF THE PARTIES }

WIL
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Case No. 44-5566
Exhibit No. 20
Federal Communications
Disposition
Presented by W.H.H. Jones
Received 11-2-58
Rejected 10-27-58
Identified 11-4-58
Reporter G. Jones

Draft: # 11/4/93

ESCROW AGREEMENT

RECITALS

HICKS 843

Report No. MA 96-46
Presented by TCCH/Informer
Exhibit No. 21
10-26-98

Disposition
Accepted by G. Holmes
Rejected
Identified

11-4-98
10-26-98

f

(b) Subject to paragraph ~~2(a)~~ and ~~2(f)~~ below, if either party notifies the Escrow Agent that the Purchase Agreement has been terminated pursuant to Section 11(a) of the Purchase Agreement, the Escrow Agent will disburse the Escrow Funds to # Purchaser and the Letter of Credit will be returned to # Purchaser.

f

(c) Subject to paragraph ~~2(a)~~ and ~~2(f)~~ below, the Escrow Agent will disburse the Escrow Funds to # Purchaser and the Letter of Credit will be returned to # Purchaser if (1) # Purchaser has notified the Escrow Agent in writing that it is terminating the Purchase Agreement pursuant to Section 11(b), (c) or (d) of the Purchase Agreement or (2) Seller has terminated the Purchase Agreement pursuant to Section 11(d) of the Purchase Agreement.

f

(d) Subject to paragraph ~~2(a)~~ and ~~2(f)~~ below, if Seller has notified the Escrow Agent in writing that it is terminating the Purchase Agreement pursuant to Section 11 (b) or (c) of the Purchase Agreement, the Escrow Agent will disburse the Escrow Funds to Seller #, including full payment to Seller under the Letter of Credit in accordance with its terms.

4(f)

(e) Subject to # paragraph 2(f) below, if either # Purchaser or Seller notifies the Escrow Agent that the transaction has not closed, or will not be capable of closing, in the manner required by the Purchase Agreement because of the failure of the FCC to consent to the transfer of the Radio Station's license and approvals to # Purchaser on or before August 1, 1998 (or for such consent to be granted but to not become a final order on or before such date), due to an adjudication by the FCC that # Purchaser is not qualified to be a transferee of such license and approvals under applicable law and regulation (except as a result of a change in such laws or regulations after the six month anniversary of the date of this Escrow Agreement), the Escrow Agent will disburse the Escrow Funds to Seller and Seller will be entitled to full payment under the Letter of Credit in accordance with its terms.

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(e)

~~1(f)~~ # Subject to paragraph 2(f) below, if Seller and Purchaser notify the Escrow Agent that # the Closing has occurred under the Purchase Agreement, the cash portion of the Escrow Funds and all earnings thereon will be # disbursed to # Purchaser. *Thereafter;*

~~1(f)~~ If Seller notifies the Escrow Agent that Purchaser has not timely made the complete payment called for under Section 2.1(a) of the Purchase Agreement, Seller will be entitled to full payment under the Letter of Credit in accordance with its terms; and

(f)

~~1(f)~~ Subject to paragraph 2(f) below, if Seller notifies the Escrow Agent that Purchaser has paid Seller a total of \$105,000 under Section 2.1(a) of the Purchase Agreement, the Letter of Credit will be returned to Purchaser.

(f)

~~1(f)~~ The notifying party and the Escrow Agent will each give a copy of such notice (the "Notice") from # Purchaser or Seller, as the case may be (the "Notifying Party"), to the other party (the "Notified Party").

~~Added~~ If the Escrow Agent does not receive a written objection to the Notice from the Notified Party before the 10th day following its receipt of the Notice, the Escrow Agent will disburse the Escrow Funds as called for by the Notifying Party. If the Escrow Agent timely receives a copy of a written objection from the Notified Party to the Notice, the provisions of Section 4 below will apply.

3. Escrow Agent's Duties. The Escrow Agent will be under no duty or obligation to give any notice, or to do or to omit the doing of any action with respect to the Escrow Funds, except to give notice, make disbursements and deposit the Escrow Funds in accordance with the terms of this Agreement. The Escrow Agent will not be liable for any error in judgment or any act or steps taken or permitted to be taken in good faith, or for any mistake of law or fact, or for anything it may do or refrain from doing in connection with this Agreement, except for its own willful misconduct or gross negligence (including a disbursement made in violation of this Agreement). The Escrow Agent will not be required in any way to determine the validity or sufficiency, whether in form or substance, of any instrument, document, certificate, statement or notice referred to in this Agreement or contemplated by this Agreement, or the identity or authority of the persons executing it, and it will be sufficient if any writing purporting to be such instrument, document, certificate, statement or notice is delivered to the Escrow Agent and purports to be correct in form and signed or otherwise executed by the party or parties required to sign or execute it under this Agreement.

4. Right of Interpleader. If any controversy arises between or among # Purchaser and Seller, or any other person, firm or entity, with respect to this Agreement or the Escrow Funds, or the Escrow Agent is in doubt as to what action to take, the Escrow Agent will (a) withhold delivery of the Escrow Funds until the controversy is resolved by a court of competent jurisdiction, # the conflicting demands are withdrawn or the doubt is resolved, or (b) institute a bill of interpleader in a court in Michigan to determine the rights of the parties (in which case the Escrow Agent will withhold delivery of the Escrow Funds until paid into the court in accordance with Michigan state law). If a bill of interpleader is instituted, or if the Escrow Agent is threatened with litigation or becomes involved in litigation in any manner whatsoever on account of this Agreement or the Escrow Funds, as between themselves and the Escrow Agent, # Purchaser and Seller, jointly and severally, will pay the Escrow Agent its reasonable attorneys' fees and any other disbursements, expenses, losses, costs and damages of the Escrow Agent in connection with or resulting from such threatened or actual litigation. All costs, attorneys' fees, and expenses of such controversy will be charged to the non-prevailing party in such controversy.

5. Indemnity. # Purchaser and Seller, jointly and severally, will indemnify the Escrow Agent against and hold the Escrow Agent harmless from any losses, costs, damages, expenses, claims, and attorneys' fees suffered or incurred by the Escrow Agent as a result of, in connection with or arising from or out of the acts or omissions of the Escrow Agent in performance of or pursuant to this Agreement, except such acts or omissions as may result from the Escrow Agent's willful misconduct or gross negligence.

6. Resignation. The Escrow Agent may resign upon 30 days' prior written notice to # Purchaser and Seller, and, upon joint instructions from # Purchaser and Seller, will deliver the Escrow Funds to any designated substitute Escrow Agent selected by # Purchaser and Seller. If # Purchaser and Seller fail to designate a substitute Escrow Agent within 10 days, the Escrow Agent may, at its sole discretion, institute a bill of interpleader as contemplated by Section 4 above.

7. Termination. Upon delivery of all of the Escrow Funds as provided in Section 2 above or upon the institution of a bill of interpleader as provided in Section 4 above, this Agreement will terminate except for the provisions of Section 5 above.

8. Notices. Any notice or communication under this Agreement must be in writing and given by (a) deposit in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, (b) delivery in person or by Federal Express or similar courier service providing evidence of delivery, or (c) confirmed transmission by facsimile transmission, telegram or telex. Each notice or communication that is mailed, delivered, or transmitted in the manner described above will be deemed sufficiently given, served, sent and received, in the case on which it is mailed, five days after the posting thereof, and, in the case of notices delivered by hand, courier service, facsimile, telegram or telex, at such time as it is delivered to the addressee (with the delivery receipt or the affidavit of messenger) or at such time as delivery is refused by the addressee upon presentation. For the purpose of notice, the addresses of the parties will be:

If to # Purchaser:

P.O. Box 487
Elkhart, Indiana 46515
Fax: (219) 294-4014
Attn: David L. Hicks

With a copy to:

Eric V. Brown, Jr.
Miller, Canfield, Paddock & Stone
444 West Michigan Ave.
Kalamazoo, Michigan 49007
Fax: (616) 383-5858

If to Seller:

333 West Fort Street
Detroit, Michigan 48226
Fax: (313) 965-1160
Attn: John L. Booth, II

If to the Escrow Agent:

Honigman Miller Schwartz and Cohn
2290 First National Building
Detroit, Michigan 48226
Fax: (313) 962-0176
Attn: David Foltyn

Any party may change its address for notice by written notice given to the other parties.

9. Choice of Laws: Cumulative Rights. This Agreement will be construed under the laws of the State of Michigan. All of the Escrow Agent's rights under this Agreement are cumulative of any other rights it may have by law or otherwise.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and such counterparts together will constitute an original.

11. Binding Effect. This Agreement and the rights, interests and obligations under this Agreement will be binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

12. Escrow Agent's Representation of Seller. # Purchaser is aware that the Escrow Agent is representing Seller in connection with the transactions contemplated by the Purchase Agreement, this Agreement or otherwise. The Escrow Agent is, and will remain, free to represent Seller in any action with respect to the Escrow Funds or otherwise arising out of or relating to the transactions provided for in the Purchase Agreement, this Agreement or otherwise.

In Witness Whereof, the parties have executed this Agreement on the date set forth in the introductory paragraph of this Agreement.

By: _____

Its: _____

Booth American Company

By: _____

John L. Booth, II, President

Honigman Miller Schwartz and Cohn

By: _____

Partner

B9883a.003/B1449r

Schedule 1.1(a)

Draft: 11/5/93

Governmental Licenses

Main	WRBR-FM file no. BLH 840907BY
STL	WDT 878 file no. BPLST 911212MH
RPU	KC-25031

B3496c

HICKS 848



Deletions appear as a Bold #.
Additions appear as Bold-Underlined text.

Draft # 11/4/93

Exhibit 2.3(a)(6)

NONCOMPETITION AGREEMENT

This Noncompetition Agreement ("Agreement") is entered into on _____, 199_ between Booth American Company ("Booth") and _____ ("Purchaser").

RECITALS

A. The parties are parties to an asset purchase agreement dated # November __, 1993, pursuant to which Booth has today sold the operating assets of radio # station WRBR(FM), in South Bend, Indiana (the "Station"), to Purchaser (the "Purchase Agreement").

B. As an inducement to Purchaser's entering into the Purchase Agreement, Booth has agreed to enter into this Agreement.

Therefore, the parties agree as follows:

1. During the Term (as defined in paragraph 2 below), Booth or any wholly-owned subsidiary thereof will not directly or indirectly own or consult with any radio broadcast station which operates a main transmitter site which is located within a 50 mile radius of the geographic coordinates of the Station's existing transmitter site (a "Competing Station").

2. The term of this Agreement (the "Term") will begin on the date of this Agreement and continue until the first to occur of (a) the fifth anniversary of this date; and (b) # Purchaser's breach of or default under the Purchase Agreement or the Note, the Mortgage, the Security Agreement or the Pledge Agreement (as defined in the Purchase Agreement), or any other material agreement between the parties.

3. This Agreement is intended, among other things, to protect profit potential acquired by Purchaser in its acquisition of Station assets pursuant to the Purchase Agreement. Therefore, in addition to its other remedies, Purchaser will be entitled to specific enforcement of Booth's obligations under this Agreement.

4. The consideration # allocated to this Agreement is \$0.00.

5. (a) This Agreement will be governed by and construed in accordance with Indiana # law.

(b) This Agreement is the parties' entire agreement concerning its subject matter and can only be amended in a written instrument signed by both parties.

HICKS 867

Federal Communications Commission

Case No. MM-98-66
Exhibit No. 88

Disposition

Reported by: G. Holmes
10-26-97

Received
Reflected
Identified

✓
✓
✓

(c) The provisions of this Agreement will be deemed severable. If any part of any provision of this Agreement is held unenforceable under applicable law, such provision may be changed to the extent reasonably necessary to make this Agreement enforceable to the maximum extent permitted by law; if any provision is unenforceable, the remainder of this Agreement will be enforceable to the maximum extent permitted by law.

BOOTH AMERICAN COMPANY

By: _____
John L. Booth, II, President

By: _____

B9913a.003/B1448r

